

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MONTE WHITEHEAD,

Plaintiff,

v.

2:17-cv-00275-MV-KK

GREGG MARCANTEL, et. al.,

Defendants.

MOTION FOR PROTECTIVE ORDER

Defendants Warden James Frawner, Warden Ricardo Martinez, Ms. Moreno, Ms. Barba, Ms. Azuna, and Management & Training Corporation (“MTC”) (collectively, “OCPF Defendants”), pursuant to Fed. R. Civ. P. 26(C) respectfully requests this Court issue a Protective Order prohibiting Plaintiff’s Discovery, and staying discovery in this case. On March 6, 2020, the OCPF Defendants received the following discovery from Plaintiff:

1. Requests for Admissions to Defendant Martinez;
2. Requests for Admission to Defendant Frawner;
3. Requests for Admission to Defendant MTC;
4. Requests for Admission to Defendant Mares¹;
5. Requests for Admission to Defendant Moreno;
6. Requests for Admission to Defendant Azuna;
7. Requests to Admission to Defendant Barba;
8. Interrogatories to Defendant Martinez;
9. Interrogatories to Defendant Frawner;
10. Interrogatories to Defendant MTC;
11. Interrogatories to Defendant Mares;
12. Interrogatories to Defendant Moreno;
13. Interrogatories to Defendant Barba;
14. Requests for Production to Defendant Martinez;
15. Requests for Production to Defendant Frawner;
16. Requests for Production to Defendant MTC;

¹ On March 6, 2020, the Court held “that Plaintiff has failed to state any claims against Ms. Mares in his Amended Complaint.” (Order Striking Portions of the Amended Complaint and Denying Motions for Service of Process [Doc. 135], at 4, fn 3.) Since Ms. Mares is not a party to this lawsuit, serving discovery on her is improper. *See* Fed. R. Civ. P. 34 (“A party may serve on *any other party* a request within the scope of Rule 26(b). . .”) (emphasis added); Fed. R. Civ. P. 33(a) (“Without leave of court or written stipulation, any party may serve upon *any other party* written interrogatories . . .”) (emphasis added).

17. Requests for Production to Defendant Mares;
18. Requests for Production to Defendant Moreno;
19. Requests for Production to Defendant Azuna; and
20. Requests for Production to Defendant Barba.

(Collectively, “Discovery”). On March 5, 2020, the Court *sua sponte* ordered Defendants to submit a *Martinez* Report [Doc. 134]. The Discovery Plaintiff seeks that could be relevant to his claims will be addressed in the *Martinez* Report that this Court has already ordered. Pursuant to Fed. R. Civ. P. 10(C), OCPF Defendants incorporate by reference their *Response to Plaintiff’s Motion to Proceed with Discovery and Forgo Local Rule 26.4* [Doc. 139] filed concurrently herewith.

As further explained in Defendant’s *Response to Plaintiff’s Motion to Proceed with Discovery and Forgo Local Rule 26.4* [Doc. 139], because the Court-ordered *Martinez* Report will cover the relevant information sought in Discovery, Defendants respectfully request the Court enter a Protective Order absolving OCPF Defendants from having to address this Discovery, enter an order staying discovery in this case pending completion of briefing on the *Martinez* Report, and for other such relief that the Court deems just and proper.

Respectfully submitted,

SUTIN, THAYER & BROWNE
A Professional Corporation

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Attorneys for OCPF Defendants

I HEREBY CERTIFY that on March 17, 2020, I filed the foregoing pleading electronically through the CM/ECF System, which caused counsel of record to be served

by electronic means. I also certify that I mailed the foregoing to Plaintiff as follows:

Monte Whitehead
Prisoner No.: 67194
PO Box 1059
Santa Fe, NM 87504

SUTIN, THAYER & BROWNE APC

By /s/ Christina Muscarella Gooch
Christina Muscarella Gooch